

January 2011

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Recommended Citation

Voice, Paul (2011) "The Authority of Love as Sentimental Contract," *Essays in Philosophy*: Vol. 12: Iss. 1, Article 7.

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Published online: 11 January 2011
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Abstract

This paper argues that the categorical authority of love's imperatives is derived from a sentimental contract. The problem is defined and the paper argues against two recent attempts to explain the authority of love's demands by Velleman and Frankfurt. An argument is then set out in which it is shown that a constructivist approach to the problem explains the sources of love's justifications. The paper distinguishes between the moral and the romantic case but argues that the sources of authority are paralleled in each. The paper ends by asking what we are to say when the demands of morality and the demands of love conflict.

Introduction

C.S. Lewis (1963: 103) identifies a characteristic of romantic love that often becomes most apparent when the imperatives of romantic love and the demands of morality collide. He writes:

When lovers say of some act that we might blame, "Love made us do it," notice the tone. A man saying, "I did it because I was frightened," or "I did because I was angry," speaks quite differently. He is putting forward an excuse for what he feels requires excusing. But the lovers are seldom doing quite that. Notice how tremously, almost how devoutly, they say the word *love*, not so much pleading an "extenuating circumstance" as appealing to an authority.

To say that love has *authority* is to claim that love has its reasons. More fully, it is to say that love's normative judgments belong within a schema of justification that provides reasons that can be offered and shared. To say, as a lover, that I did something

in the name of love is to say that I was justified in my action and that I am in a position to offer reasons for my actions (or beliefs). Not just any reasons will do when we speak of authority. Some reasons explain, but here I am concerned with reasons that justify and so I am interested in categorical reasons rather than hypothetical ones. A categorical reason engages the motivations of subjects directly hence its authority. It does not defer to other reasons but claims the authority to command the will.

In this paper I will argue that the usual ways of connecting romantic love and reasons fail to account for either the particularity of love or for the justificatory role of love's reasons. In place of the usual approaches I will offer an account of love as a sentimental contract resting on a theory of romantic constructivism. Although this approach is counterintuitive I believe it offers a philosophically satisfying account of the authority of love's judgments. More particularly, it explains how romantic love can be a genuine reason for action and belief and it explains how the demands of morality and love can genuinely conflict. To make good on these claims I need to accomplish two tasks. First, I need to say why I think romantic love has its reasons and show why these are justifying, authoritative and thus categorical reasons. Second, I need to explain how these reasons acquire their authority. The outcome of my argument will be a sketch of a theory of love as a sentimental contract and a new account of love's conflict with morality.

I have divided my discussion into five parts. First, I offer some grounds for thinking of love's judgments as anchored in reasons rather than being merely expressions of a 'mad passion'. Second, I argue that J. D. Velleman's way of connecting romantic love to justificatory reasons is mistaken because it sacrifices the essential particularity of love. Third, I argue that Harry Frankfurt's explanation of the authority of love correctly identifies the categorical character of love's imperatives but he achieves this only by sacrificing the justificatory requirement for love's authority. In the fourth section I set out my account of love as a sentimental contract arguing that it corrects the deficiencies in Velleman's account by retaining the particularity of love and corrects the deficiencies in Frankfurt's account by grounding love's reasons in a scheme of justification. Finally, I briefly address the conflict between love and morality and show that it is a genuine conflict between two incompatible but closely related registers of justification.

I.

In what sense does romantic love have its reasons? Typically love is thought of as being beyond reason but I think this is a mistake. In the philosophical literature on love we can identify two positions – one that adopts the view that love is irrational and another that takes love to be fundamentally a rational enterprise. It will be useful to outline these positions before I set out some considerations in favor of the latter account. I want to

start the discussion of love's judgments by distinguishing between what I will call *idealization* definitions of romantic love and *discernment* definitions. The former take the object of love to be an idealized representation of the beloved while the latter argues that love properly understood is matter of discerning the true features of the beloved.

We can begin with this anecdote from Stendhal (1947: 6)

At the salt mines of Salzburg, they throw a leafless wintery bough into one of the abandoned workings. Two or three months later they haul it out covered with a shining deposit of crystals. The smallest twig, no bigger than a tom tit's claw, is studded with a galaxy of scintillating diamonds. The original branch is no longer recognizable.

Crystallization is what Stendhal calls the process of idealization which is essential to the process of falling in love. The lovers over-evaluate each other's qualities, idealize each other, and transform the other in each of their minds from a plain bough into a "galaxy of scintillating diamonds". While crystallization occurs at the beginning of the process of falling in love it continues, says Stendhal, "throughout love almost without a break." He goes on to say (1947: 6):

The process is something like this: whenever all is not well between you and your beloved, you crystallize out an *imaginary solution*. Only through imagination can you be sure that your beloved is perfect in any given way.

The lovers' whispered "sweet nothings" are almost always literally false - "You are the most beautiful/clever/sexy/whatever in the world". On this account the lovers are the bare scaffold for the draperies of each other's imaginative projections. Each engages in a process of willful self-deception concerning the merits and attributes of the other. There is on this view a kind of consensual imagining between the protagonists, what we might call a conspiracy of delusions. So, here crystallization is a necessary element in the process of falling and being in love. At its base is an exchange of promiscuous imaginings.

What is crucial to emphasize here is the irrationality at the core of this projective account of love. The idealization is constituted by a set of false beliefs entertained and accepted by the lovers. This is most often explained as the result of some overwhelming passion, a "divine madness". The passion of love misdirects our usually reliable attention to the world and distorts systematically our capacity to distinguish true and false beliefs about our partner. So, the idealization view says that lovers are essentially irrational in subscribing to false beliefs about their beloved and irrational in submitting to a passion that systematically misdirects their cognitive powers.

In contrast to Stendhal's commitment to the irrationality of love Ortega (1967: 145) rejects both parts of the idealization view. Firstly, he denies that genuine romantic love is a "passion" which he says is a "pathological state which implies defectiveness of the soul." He calls on his readers to "cease believing that the measure of a man's love lies in how stupid he has become or is willing to be." Instead, genuine love implies an "enchantment" and a feeling of "total surrender". This enchantment and surrender is not brought about by desire or passion but rather through "perception", "emotion" and "constitution". Perception for Ortega is discernment, the capacity to take a "disinterested interest" in another person and see her as she is. Ortega is at pains to make clear that he does not mean to "intellectualize" love. Enchantment is an emotion that suitably sensitive souls can experience. His point is to say that love is not "blind" or "irrational". Love, he says, has its reasons and these reasons are rooted in the qualities of the beloved, qualities that a lover can discern in his "disinterested interestedness". He concludes "that in true love it is essential for there to be a moment of discernment, which reveals that character of the individual in which sentiment has found reason to sprout and blossom." Thus Ortega rejects the second part of the idealization view that love is irrational.

I want to go along with Ortega by rejecting both the view that love is nothing more than an overwhelming passion and, more importantly, rejecting the opinion that love is in its essential aspect irrational. However I think both Stendhal and Ortega trade on a very narrow understanding of what is meant by rationality. To say that a lover's belief about her beloved is false is, I suppose, to say that this belief cannot be shared by others unless they too occupy the lover's peculiar and particular place in the world. For example, Alcibiades's claim that Socrates's snub nose is a love-worthy feature is strictly false if the test is whether others see his nose as love-worthy too (worthy of being loved by them). However, although this belief is strictly false *if we take up a "view from nowhere,"* it is still a claim with rational features. A view from *somewhere* can be rational and in the case of love such a view particularizes and articulates a system of love-worthy characteristics. So, if it is pointed out to me that what I take to be my beloved's toothy smile (an important love-worthy property for me) is in fact clever stage make-up, then I am constrained by reason to either say that I no longer love her or to find some other reason to find her love-worthy. The idea that I am subject to an illusion is completely wrong. The snub nose or toothy smile you see is the same as I see, what differs is that snub noses and toothy smiles fit within a system of motivating reasons I have adopted. There is no illusion as such (as the visual metaphor of crystallization implies). Now, it is true that the genealogy of both the reasons and their motivating powers may be and often is much deeper and darker than most of us recognize. However, this does not disqualify them as reasons that are subject to certain rules and consequences. Even the claim that the belief that a snub nose is a love-worthy characteristic is false is not quite right. The view from nowhere does not make such beliefs false, rather it indicates that such beliefs are neither true nor false.

It is important to emphasize that I do not mean that love is a cold and calculating intellectual decision. This would be absurd, as Ortega points out. However, deep emotions, “surrenders of the will,” “magical enchantments,” falling in love and being in love can all be motivated by reasons and exist with a reason-giving framework. Where reason departs the scene completely of any human activity, then humanity departs along with it. We are capable of human love precisely because we are capable of understanding and giving reasons. And it is this insight that Ortega’s discernment view of romantic love brings to the surface.

We are led away from Ortega’s insight because we fail to distinguish between romantic love understood as exclusively an emotion and romantic love understood as both grounds for a judgment and as a source of authoritative imperatives. These are usually entwined because our judgments concerning our beloved are premised on having certain feelings, and the imperatives of love are often ‘justified’ by the fact that the lover feels a particular way and that she believes certain things. However, when assessing the claim that love is irrational, it is important to keep these aspects apart. As I have pointed out, love’s judgments are subject to the test of rationality (they are revisable in the light of evidence) and judgments about love-worthiness are reason-giving judgments insofar as they stand as justifications for the feelings. In addition to these rational qualities of love I want to defend the idea that one can be in love and under love’s obligations even when one does *not* feel love’s affection for the beloved. I should be clear here that I do not mean Kant’s peculiar notion of “universal love,” a love stripped entirely of any particularity. Instead I want to say that on any occasion one can have a reason to fulfill one’s romantic duties and that this duty obtains entirely independently of any affective attachment *on that particular occasion*. Now this idea can be cashed out in two ways. Firstly, one might have no affection (no passion, no emotion) at the time of recognizing and acting on one’s romantic duty. Secondly, one might have, counterfactually, fulfilled one’s romantic duty even if the affection one does feel was absent. Such duties therefore have a categorical character and depend on an agent’s being moved by reason rather than being moved by passion alone. Obviously, the claim is not that romantic duties can hold between people who have *never* felt love’s affection for one another. Instead I am arguing that a romantic love relationship, founded on and most likely sustained by affective ties, has imperatives that are not necessarily grounded in an occurrent emotion. This is to say that the justification and authority of such imperatives lies outside the particular feelings of being in love¹. What this justification is I will set out later when I turn to my account of a sentimental contract.

I have rejected the idea that love is irrational by arguing that love’s judgments fit within a scheme of reasons that constrain the lover and that serve as public justifications, and I have rejected the idea that love is essentially a “mad passion” by arguing that love’s imperatives can be justified independently of an occurrent affection for the beloved. In short, love’s judgments are subject to reflective scrutiny (they are revisable), and love’s

imperatives are binding independently of any particular passion or sentiment (they are categorical). Are these criteria enough to ground the rationality of love? One reason to think not concerns the scope of both love's judgments and imperatives. The reasons of love, as I argued above, are particular to the lover and so lack one characteristic that it might seem is a requirement for a fully-fledged reason, namely, generality. A reason is general when it incorporates the possibility of others adopting the same reason in the same given circumstances. The reasons of morality are general in this sense since it doesn't matter *who* someone is, it matters only that they occupy a particular situation. This secures the impartiality of morality's imperatives. However, the particularity of the *who* is essential to love. If love's reasons are revisable and categorical, as I have argued, must they also be general, and if so, can they be?

II.

One instructive approach to this problem of generality is offered in argument by J. D. Velleman. It is instructive for two reasons. First, it purchases generality at the expense of romantic love itself, as I will argue. In doing so it emphasizes that particularity has to lie at the center of an account of love and its reasons, and it forces us to look to another way of reconciling particularity with generality. Second, it offers a clue to how this can be achieved by pointing us towards morality as a model for explaining love's authority.

Velleman states the problem in the following fashion (1999: 340):

The Kantian moral agent cleaves to his loved ones only on condition that he can regard cleaving to loved ones as reasonable for anyone, and thereby seems to entertain "one thought too many" for cleaving to them at all.

The "one thought too many" quotation is, of course, the gist of Bernard Williams's criticism of any universal morality, that is any morality Kantian or utilitarian that fails to recognize the particularities of our moral concerns. How then is the requirement of universality (the generality of reasons and the requirement of impartiality) for Kantian moral imperatives to be made compatible with the "cleaving" of love to particular individuals and not to others? The point here is that romantic love seems not only incompatible with the requirements of a Kantian morality but also in direct opposition to the obligations of a Kantian moral agent.

The direction of Velleman's suggested solution is not to question the impartiality of morality but to question the partiality of love and in making the object of love non-particular he concludes that love can be a moral emotion. The non-particular that is the object of our love is the intelligible self, the self that Kant says we have a duty treat as an end and so with respect, awe and reverence. This respect might indeed give us

reason to love a person, but the motivation for this love is no different from the motivation we would have to love any other person. This looks like the love Kant describes as “love of one’s neighbor” or love for humanity². The fact that a love of this sort is directed to any particular person is *accidental*. There is, it seems, nothing about the person herself *that distinguishes her from another person* and so there is nothing particular that such a love can get a grip on. However, Velleman does offer a handle for the grip of partiality and the particular. He argues that (1999: 372):

One reason why we love some people rather than others is that we can see into only some of our observable fellow creatures ... Hence the value that makes someone eligible to be loved does not necessarily make him lovable in our eyes. Whether someone is lovable depends on how well his value as a person is expressed or symbolized for us by his empirical persona.

Partiality in our love relationships arises because only some empirical selves trigger this respect and awe. But *what* we love when we love morally is what everyone has and that is a rational will. The particular is a route for the universal, a path enabling us to get beyond the phenomenal world to the noumenal world of universal essences. The empirical beloved is a means by which I come to respect her true self (a self that is indistinguishable from any other self). A love is impartial because what is loved in a beloved is shared by all others. However, the lover loves a particular person because *only* she exemplifies what is worth loving in a way that can be accessed by the lover. So, the particulars matter - the snub nose, the toothy smile, the gentle disposition - but not as objects of love in themselves, but as means to love the inner, universal essence of humankind. Has Velleman rescued love for morality? Can romantic love be universal and therefore meet the requirement of generality set out earlier? The question to ask here is at what cost has this impartiality been purchased? I think it has been purchased at the cost of love itself.

Velleman’s strategy takes very seriously a distinction Kant relies on between our animal selves and our intelligible selves. The former is the site of contingency and particularity. The latter is the site of what we share with all other rational beings. If we reflect on what it means to “see through” the empirical persona in a love relationship, what it means to the person who is seen through, then, I think, we will begin to see the cruelty and lovelessness contained in Velleman’s proposal. The idea that the phenomenal world is means of ‘seeing through’ is a familiar claim in Kantian and neo-Kantian aesthetics. A painting for example opens up a gateway to the noumenal. The experience of the sublime is another opportunity for us to grasp the noumenal³. Artworks and the great events of nature are therefore like one’s beloved in this respect. They are a means towards the end of a communion with a world beyond the contingent and the particular. The problem is beginning to take shape. The beloved’s golden hair, her divine breath, the blush of desire on her cheek are all to be seen through. Her

feelings of affection and passion, her intense interest in *you*, her concerns about a future, her love itself is to be seen through. The beloved is no more present as a *person* than the canvas surface of a painting or the wild winds of a great storm. To love in this way is either to be crushingly cruel as Kierkegaard's protagonist is in *The Seducer's Diary*, or to be foolish as Werther is in Goethe's *The Sorrows of Young Werther*.

To see how poorly Velleman's argument fares take the example of the film of *The English Patient*⁴. Count Ladislaus betrays the trust of a friend and colleague when he seduces Katherine Clifton away from her husband, and on the grounds of a whispered lover's promise he kills a man and then betrays his country, knowing that the consequences of this action will likely mean deaths of large numbers of his compatriots. The Count's justification is that he loves Katherine. On Velleman's account this justification makes no sense at all. The man the Count murders and the many soldiers whose lives he jeopardizes are all equally worthy of his love. The only difference is that they lack the particular features that allow him to "see through" them. His promise to Katherine cannot be "I will return for you no matter what." It can only be "I will return for you only if doing so is compatible with respecting the rational wills of all others since I have equal reason to love them". This really does look like "one thought too many." In a peculiar irony it looks like Velleman is suggesting that we use the animality of the beloved as means to achieve the end of a universal aim. Love achieves its moral status in this scheme only by making itself blind to what matters most to the beloved - her particularity.

Love cannot be a moral emotion because love, properly understood, cannot take on the rigid requirement of impartiality, and thus generality, without losing its essential character as love. On Velleman's account love's reasons are revisable (a lover can be mistaken about what particulars allow her to access the rational will of her beloved) and love's reasons are categorical (the imperative to love the humanity in the other is not a hypothetical one for either Kant or Velleman). Velleman also fails to account for the generality of love's reasons. However, there some important lessons to be learned from this failure. First, we need some mechanism by which to generate the right sort of generality for love's reasons. The "view from nowhere" that is the usual standard for generality for our epistemic beliefs is obviously not the right sort of generality. A Kantian "view from nowhere" (the Kingdom of Ends) is also not the right answer. Both approaches elide the essential particularity of love. What is needed then is a view from somewhere that has some generality (enough to ground love's imperatives) but which holds on to the particularity necessary for romantic love. It is only if we can achieve this outcome that love and reasons will be properly connected and the authority of love explained. Second, Velleman points us towards a fertile source for thinking about the generality of reasons, namely morality. I will take both of these lessons into my account of love a sentimental contract. However, before doing so I want to examine an argument that seems to meet the requirements so far set out for love to have its

distinctive reasons and which also purports to explain the nature of the clash between love and morality.

III.

Harry Frankfurt (1999, pp. 129-141) has argued that the imperatives of love carry authority. His claim is not that they are moral requirements but that love's imperatives share with moral oughts a categorical nature. It is this categorical feature that gives love its authority. I think Frankfurt is correct in this claim. As I argued earlier we can be moved to meet the demands of love independently of any particular interests and feelings at the time of the demand. This only makes sense if love has a call on us that is categorical rather than hypothetical. However, I dispute Frankfurt's grounds for his claim. I will argue that he gives up the place of reason in love's claim to authority and thereby destroys that authority.

Frankfurt, unlike Velleman, agrees that love is partial in its aims. It is he says "paradigmatically personal." However, love's demands originate, he says, in an "essential character" of the will and are not therefore either "adventitious" or an external force acting on the passive will. Love then forms part of the "volitional" structure of the agent and so acting in accord with his structure is to be ruled by one's essential nature and this, says Frankfurt, parallels Kant's account of autonomy. He says (1999: 138) that the necessities of love "define our volitional boundaries. They mark our volitional limits, and thus they delineate our shapes as persons." Love is not self-interested but a disinterested interest, it is active rather than passive, and its commands come from within rather than from heteronomous sources.

...the commands of love are also categorical. The claims that are made upon us by our ideals or by our children, or by whatever we may love disinterestedly and without conditions, are as unconditional and as unyielding as those of morality and reason. (Frankfurt 1999: 136)

Love in this sense is not a passion, an intense feeling that overwhelms the will and moves us by force to act in the name of love. He argues that we cannot will ourselves to love but once we love we are necessitated by love's demands. A mere passion however forceful has no claim to authority, whereas an essential aspect of our motivational structure, an aspect that is part of *who we are*, has an authority. In being obedient to its demands we obey ourselves and so we exhibit our autonomy by conforming to what we are. We could only escape the demands and authority of reason for example by being different kinds of creatures. It is in being true to our constitution that we are fully autonomous. Likewise, Frankfurt says (1999: 135) "The will of the lover is rigorously constrained. Love is not a matter of choice." And further that (1999: 136) "The captivity of love cannot be entered or escaped just by choosing to do so." Frankfurt thus

connects the authority of love's demands to keeping true to one's "essential nature". When one fails to meet these categorical demands "he fails to treat himself unequivocally as an end." (1999: 139)

I think Frankfurt's argument answers the question of how a lover *takes himself* to have authority. From the inner perspective, from the stance of the lover, the sense of authority that accompanies love's judgments is well explained. The lover wants to say that he meets the duties of love because he *must* and that this "must" is not the must of an external force, either an overwhelming passion or unconscious acting-out. It seems to him therefore to be an imperative that is as much categorical as the imperatives of epistemic rationality and morality. However something very important gets lost in Frankfurt's account. The authority the lover claims is not rationally communicable to others. It is not an authority connected in an appropriate way to justification. Others can be empathetic with the lover's claims, can perhaps see how he takes himself to have authority, but there is no room here for agreement with his authority. We can perhaps recognize this authority but we cannot acknowledge it. From the outside perspective the claim to authority is no more rationally compelling than the excuse of a "mad passion". But a lover who acts in accord with love's demands is doing more than this. He is claiming authority *because* he takes himself to be justified. And this justification is supposed to reach out beyond the magical sphere of the beloveds and engage not only the sympathy and perhaps admiration of others but also their reasoned consent. Frankfurt's strategy cuts off this possibility.

To see the difficulty here one only has to compare a claim to romantic autonomy that Frankfurt supports with a claim to a consuming, irresistible passion. In the latter case the best that can be offered on behalf of a lover who has acted badly is that she is excused a moral wrong-doing. The contrast that we need to be alert to is the difference between excuses and justifications. One might claim for example that the necessities of love can trump the claims of morality either because being in love is an *excuse* (the person in question is not responsible for her action or choice), or because being in love is a *justification* for her action or choice (although she is responsible for what she did it was not wrong). In the former case we might say that although her actions, the betrayal of a spouse say, caused morally significant harm, she is not responsible. She is excused, because in some sense the action was not properly *her* action. *She* did not do it. In the latter case, though her betrayal caused significant harm it was not wrong, she was justified in her actions because her love cancels the moral significance of the harm she has caused.⁵

Frankfurt's argument confuses excuses and justification. For, while his argument makes acting on love's demands in some sense central to the character of the person who acts, he also argues that the lover is compelled and has no alternative to her actions. Where we assign responsibility we presuppose choice. Kant's suggestion (1996: 45) that we set up a gallows outside the house of someone about to act on an "irresistible" passion

is made in support of his argument that we are not only responsible for what we do but that we always have a choice *because* we are autonomous agents. When Frankfurt disconnects choice and autonomy he muddles the excusable with the justified. If it is part of the “essential character” and “volitional structure” of Count Ladislaus for example that he betray his country to fulfil a lover’s promise, then he either chooses this act and so is responsible for it, or he is compelled and is possibly excused his moral responsibility.

So I reject Frankfurt’s account of the authority of love’s demands. I have argued that he fails to connect the idea of authority with the idea of justification and I have argued that he muddles the ideas of justification and excuse. At the root of these problems is an ambivalence in the notion of what is meant by “categorical”. In one sense a categorical reason signifies a “must” *for the person* offering such a reason insofar as the reason does not rest on other reasons and thus the chain of reason-giving has come to an end. In another sense a categorical reason is a special form of justification that stands, as it were, alone, unsupported and the justification is independent of the force of the reason (its “mustness”) for the person who is offering it. The “mustness” of a categorical reason and the justification it offers go together. Frankfurt wrongly pulls them apart and so any successful account of love’s authority, its reason-giving character, has to ensure that both senses of the categorical are preserved.

IV.

What is required then to keep the ideas of authority and justification in contact with one another. We need to explain how love gets its justificatory authority while attending to our earlier argument that the scope of love’s imperatives are partial. Although love’s demands are not moral, morality can offer us a clue here. A contractarian approach to morality argues that its imperatives derive their justification from an agreement⁶. It is because agents would have agreed to certain principles by following a procedure defined by the proper standards of practical reason that these principles have a categorical force. The idea is that once we suitably define agents, the circumstances of their bargaining and the procedures of their deliberation, then we have the basis for justifying the principles that emerge. The justification on offer here is addressed to real, empirical agents who reflect on what they would have agreed to in the absence of the distortions of their particularities and narrow individual concerns. The approach is constructivist. Moral constructivism has been largely modeled on what Rawls calls “Kantian constructivism”. The parties to the Kantian agreement are *idealized* versions of ourselves. The scope of the agreement is universal thus giving it its moral character. The categorical force of morality’s demands is explained therefore by this abstraction from the “pathological” individuality and closed perspective of individual agents. I *must* act in accord with such principles because this is what I would choose as a fully autonomous rational and reasonable agent. I claim authority in my actions because they

are justified by this hypothetical agreement and I can communicate my authority to others by making them acknowledge and perhaps share my reasons.

Can the normative character of a love relationship rest on agreement? Love itself cannot of course be defined as an agreement (for love need not be reciprocated), but, I argue, love's obligations, duties, necessities and imperatives arise through an implicit, perhaps implied and sometimes actual agreement. Such an agreement provides the claim to authority and thus justification for what is done in the name of love. It also provides the grounds of resentment when lovers fail in their romantic duties. The agreement thus introduces the required normative dimension to a passionate exchange and it establishes a regime of "oughts".

We can think of this as *romantic constructivism* in contrast to moral or political constructivism. The parties to the agreement are idealized versions of the lovers. Not idealized versions of lovers as such, but idealized versions of the particular lovers. Here, as in the moral case, when confronted by a romantic dilemma we abstract from the occurrent feelings of the moment and the frailties of will, and ask what we would have agreed to as a principle to guide action. The parties to the agreement are of course the lovers themselves and so the principles will be particularized and the burdens and requirements most likely asymmetrical. Let us take an obvious example. When confronted with a temptation to cheat on a lover it is possible to put oneself in an "original romantic position" and ask what you and your partner would have agreed to independently of the current feelings and temptations. What is veiled in this seeking of a point of reflective equilibrium is the particularities of the moment and what is revealed is an idealized conception of the lover and her beloved.

The authority of the principles that emerge from an agreement rests on the procedure of construction. In the moral case the procedure models a conception of persons as morally capable agents, together with an account of practical reason and a way of ensuring or testing the universal scope of the principles. In the romantic case the procedure models a conception of particular persons as romantically capable agents and an account of practical reason. When a lover declares "I love you" this can be understood in three different ways. Firstly, it can be understood as a description of present feelings. Secondly, as a prediction about future feelings, or thirdly as a speech act that invites the beloved to initiate a normatively structured romantic relationship. The commitment that this act invites is similar to the commitment that a promise initiates but is also instructively different. The moral authority a particular promise has is grounded on a universalizable principle of promise keeping. The authority that a love commitment has (say a principle of sexual exclusivity) rests on a non-universalizable principle. While anyone similarly situated in the moral case is constrained to act in accord with the moral principle, in the romantic case one's situation is defined by the fact of being in love with the beloved. This latter circumstance is not universalizable and so the constraints introduced by the agreement are particular to the parties to the

agreement. This is what distinguishes the moral from the romantic. However, there are also important similarities between the moral and the romantic case. In the moral case the parties are supposed to be capable of acting on principle and therefore recognizing the categorical character of the imperatives that emerge from the agreement. They are, in Rawls' language, "reasonable". In the romantic case the same is supposed. The lovers can act and decide independently of their interests and passions, broadly understood. They are other-regarding (although this other is one particular other) and they recognize the categorical nature of their commitments. Love, like morality, is very demanding.

It is now possible to distinguish three types of agreement – moral, romantic and prudential. Moral and romantic agreements both require persons capable of acting on principle, but in a prudential agreement the parties act from the motive of satisfying their own interests exclusively. Moral agreements have a universal scope whereas romantic and prudential agreements have a restricted scope limited to parties to the agreement. This shows us that romantic agreements share some features with both moral and prudential agreements but are distinguishable from both.

The agreements that moral constructivists are concerned with are hypothetical. They are accessed by reflection and stand as a measure of our moral successes and failures. Normatively significant romantic agreements can be actual, implied or hypothetical. The construction of a "we" that a romantic relationship initiates is sometimes a very public event with explicit promises made. Sometimes expectations are merely implied by behaviors and words. But at any time it is possible to enter into the romantic original position and ask "What would we have agreed to as the principles that form the normative basis of our relationship?" This allows the parties to access a standard by which to judge their romantic success and failures. Now, not every love relationship has a normative dimension although I would argue that most do. Love understood as no more than "mad passion", even if this passion is shared by both parties, has no normativity internal to it. The lovers have no grounds for resentment if the other fails her expectations. In fact there is no sense in which one really has expectations of the other in this situation rather than merely making predictions about the beloved's future actions.

So the claim here is that the authority and justification of the romantic ought, of love's imperatives, is a *sentimental contract*. It is sentimental because love is, of course, based in the sentiments - emotions, as well as attitudes, and beliefs. But romantic love is more than sentiment; it is a normative engagement of limited scope. The parties to the agreement are, as I have said, the lovers, and it would be a mistake to think of these as the empirically situated lovers. The parties are abstractions of the lover and the beloved. These abstractions are not Stendhal's illusions and idealizations. The agreement projects itself into the future by engaging the future selves of the couple in a normative arrangement that has a categorical call on their reason. It is by discerning the lover in

her present empirical reality, recognizing her love-worthy qualities (as Ortega requires), and committing oneself to be true to one's reason rather than one's passion, that the lovers enter a normatively significant agreement. While the "golden hair" attracts the potential lover by being for him a love-worthy quality he abstracts from that contingent particularity and contracts with his beloved in all her present and future particularities. His concern is with her essential and real self rather than with what currently triggers his affection. Most particularly the sentimental contract abstracts from the ebb and flow of sentiment and regard. Abstractions need not be illusions. Ortega's discernment and "magical enchantment" can run together without collapsing into a willful self-deception. Of course, we are epistemically frail and our "discernments" are sometimes errors. It is on these occasions when lovers claim exemption from their romantic duties. When one party claims that the other is not who she thought he was, she claims that the agreement was made under falsifying conditions. Where idealization is self-deception then the claim to love's authority is naturally put into question. It is only when discernment and abstraction go together that this authority claims our serious attention.

I have described the normativity of the romantic agreement a sentimental contract. The reader might ask what role sentiment plays if lovers are supposed to abstract from their sentiments. The contract is sentimental in the sense that it rests on and presupposes the existence of love's sentiments. Without the feelings that love evokes the agreement would not be a romantic one. But this is not to say that one is to be guided in one's romantic duties by the sentiments, feelings and passions of love. The duties of love are spelled out in the contract. One can fulfill these duties lovingly and passionately but the authoritative source of the duty is not passion but reason.

I have said that the duties of the lover are assigned independently of whether he feels a certain way on a particular occasion. Thus the commitment of the lovers is a commitment of abstracted present selves to future selves. And so the imperatives that emerge from this agreement have the familiar categorical quality that moral imperatives have. And they have this quality *for the same reasons*. The lover argues "I *must* do this because this is what I agreed to in my persona qua lover." The beloved argues "She *must* do this because she, in her persona as lover, agreed to it." When the lover is challenged she claims the authority of love and the source of her authority is the sentimental contract. This explains how we can act in the name of love even when our feelings are not engaged (actually or counterfactually).

Love is not a moral emotion. It lacks universal scope and so it cannot qualify as moral. Love is sometimes a claim to justification. It only succeeds in this insofar as love's reasons are communicable. While I am not party to the sentimental contracts of others I can acknowledge the justification that arises from them. I can say that I too would have a reason to act thus and so in that situation if I were party to the agreement. This is very different from saying that I would have another's feelings if I were in his situation. I cannot have another's feelings, but I can have his reasons. It is this that marks the

difference between claiming justification for what one does rather than seeking an excuse. In the former case I am asking for you to understand and recognize my reasons, whereas in the latter case I am asking you to forgive the absence of reasons.

What is important to note at this point is how the issue of generality and particularity is addressed in this account. While the romantic agreement is not universalizable and so is not general in that sense, it is also not wholly particular either. The agreement insofar as it is a construction entered into by an idealized version of the lovers abstracts from the empirical particularity of the lovers and so is general in the sense of being a step back from the empirically particular toward an outside, more objective, view. Another way of thinking of this is to say that an external standard is set for the lovers that measures their romantic successes and failings. This is not a “view from nowhere” but it is also not a view from with the closed perspective of a empirical individual. We might think of this as a partial generality. It is enough, I suggest, to provide the reasons lovers offer for their actions with the stamp of rationality. For while an outsider is not party the romantic agreement she can understand that *anyone* who is party to such an agreement has duties and obligations in respect of it. She doesn’t have to know who you are in particular, she only has to know what the agreement commands. While this is not the generality we want for epistemic reasons or for moral reasons it is, I suggest, precisely the sort of generality we want for romantic reasons. The particularity of the lovers is preserved since it is they who enter the agreement and are bound by it but enough generality is created by the agreement to ground the possibility of justification for the reasons lovers offer for their actions.

I have suggested in rather a rough way how the claim to love can acquire authority and offer a justification. In the final section I want to return to the issue raised at the beginning and examine the moment when love and duty ask and demand very different things of us. What sense then can we give the idea that love can trump the demands of morality?

V.

At the end of Velleman’s article he returns to Williams’s lifeboat example. Should a person favor her spouse over several other people? Is entertaining the very question a failure of a sort by the husband as Williams suggests? Velleman says, as he must, that no choice can be made. What is valuable on his account is located beyond any particularity. He says (1999: 374):

These cases invite us to imagine situations in which we feel forced to make choices among things that cannot coherently be treated as alternatives, because their values are incomparable.

My response to Williams's example matches Velleman's but my grounds are very different. What we have is two different registers of justification. When we occupy the register of morality we see, understand and acknowledge the drive to universalize and smooth over particularities. We have reasons not to favor a loved one, reasons that we can communicate to others who can share these reasons with us. When we are asked to explain ourselves we don't say "I couldn't help myself," we say I had to do it and we call on all the authority of morality to support ourselves. However, when we occupy the register of love we particularize. We have reasons, not excuses, that we offer others and which others can come to share. Our choice lays claim to authority. This is why we have a genuine dilemma here. Not, as Velleman thinks because we are trying to compare one noumenal self with another, but because we are calling on two very different registers of justification.

Now some might argue for the priority of the moral register. Some, like C.S. Lewis arguing from his Christian perspective have said that Eros functions like a false god lending a devilish authority to love's imperatives. Others like Denis de Rougemont offer a transcendental argument. Writing about Tristan and Iseult he says (1991: 215):

...like all other great lovers, they imagine that they have been ravished "beyond good and evil" into a kind of transcendental state outside ordinary experience, into an ineffable absolute irreconcilable with the world, but that they feel to be *more real than the world*. Their oppressive fate, even though they yield to it with wailings, obliterates the antithesis of good and evil and carries them away beyond the source of moral values, beyond pleasure and pain, beyond the realm of distinctions - into a realm where opposites cancel out.

But there is something metaphysically extravagant in these explanations. Velleman with his noumenal selves, Lewis with his false gods and De Rougemont with his transcendence into other realms all call on the mysterious to explain away the dilemma and assert the ultimate authority of morality over love. But our metaphysics need not get out of hand once we see that there is a plurality of justification and consequently either the agony of uncertainty or the certainty that comes from occupying only one of the frameworks of justification. As in Wittgenstein's duck-rabbit illusion we cannot feel the authority of both perspectives at once and so we cannot compare the "strength" of each.

Does this mean we cannot blame lovers for their moral failings? Must we accept Count Ladislaus's moral calamities, his deceptions and murders? The answer is that we should not. The authority of love does not cancel out the authority of morality. We blame him and condemn his immorality. But when we shift perspective and entertain his justifications we understand his reasons. If he had left Katherine in her desert cave

while he calculated the limits of his moral duties he would have made a poor lover and we would have understood how Katherine would have grounds for resenting his romantic failings.

The dilemmas that haunt moral philosophy and provide grist for the mill of romance persist because they are genuine dilemmas. I have tried to explain why they are genuine rather than illusory by showing how they involve incompatible claims to authority. I have explained the authority of love as resting on the justification supplied by the idea of agreement. The plausibility of this explanation is enhanced when we notice that morality's own claim to authority rests on the same idea. The difference between the two is merely a difference in scope.⁷

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¹ These claims do not go so far as to argue that the feeling of love can *itself* be commanded. For argument to this effect see Sankowski (1978).

² See Kant (1964: 118).

³ Kant's account of the beautiful and the sublime in the third Critique uses both as avenues to alert us to the "supersensible aspects" of our nature. See his discussion in the first part of *The Critique of the Power of Judgment* pp. 59-159. Mothersill (1984: 209-246) discusses this aspect of Kant's ideas.

⁴ The film is based on the novel *The English Patient* by Michael Ondaatje.

⁵ For the contours of the distinction between excuses and justifications see Austin (1956), Hart, H.L.A.(1968), and Moore, M. (1990).

⁶ The idea that agreement is the source of justification for moral as well as political values is suggested in Rawls (1971, p.17) and Rawls (1980). The argument is more fully set out in Scanlon (1982) and (1998).

⁷ I would like to thank Amelie Rorty and Heather Kennon for their comments on earlier drafts of this paper.